

1 HONORABLE BENJAMIN H. SETTLE
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 HP TUNERS, LLC, a Nevada limited liability)
11 company,) NO. 3:17-cv-05760-JRC
12 Plaintiff,)
13 vs.)
14 KEVIN SYKES-BONNETT and SYKED)
15 ECU TUNING INCORPORATED, a)
Washington corporation,)
Defendants.)

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17 In accordance with Federal Rule of Civil Procedure 26(f) and Local Civil Rule 16,
18 Plaintiff HP Tuners, LLC (“HPT”) and Defendants Kevin Sykes-Bonnet and Syked ECU Tuning
19 Incorporated (“Defendants”) (collectively, the “Parties”) hereby file this Joint Status Report.

20 **I. NATURE OF THE CASE/PRINCIPAL ISSUES**

21 This case concerns alleged misappropriation of Plaintiff’s source code and proprietary
22 information by the Defendants. HPT is a niche business, which provides complete, cost effective
23 automotive tuning and data acquisition solutions for enthusiasts and professional shops. HPT’s
24 business includes but is not limited to computer hardware and software designed for use in
25 custom and/or pre-programmed engine and transmission tuning and calibration applications for

1 automobiles, trucks and other types of vehicles (including but not limited to ATV's,
 2 snowmobiles and watercraft) (the "HP Tuners Business").

3 Plaintiff alleges that Defendants' have misappropriated HPT's code and incorporated it
 4 into the products and software it is developing and that released on October 31, 2017. Plaintiff
 5 alleges that there is exact duplication of HPT parameter names (character per character,
 6 including abbreviations) showcased in Defendants' own software. Plaintiff alleges that
 7 Defendants have copied HPT's licensing and have publicly admitted to hacking and reversing
 8 HPT's software for their own benefit.

9 Defendants have been in the business of tuning vehicles for performance and economy
 10 for numerous years. As part of that business, Defendants independently developed their own
 11 software application for tuning vehicles having electronic control units, which has been in use
 12 for nearly three years. Accordingly, Defendants deny Plaintiff's allegations and rely on the fact
 13 that Defendants' software could not possibly incorporate any of HPT's code since Defendants'
 14 software already existed for years prior to Plaintiff alleging that Defendants misappropriated
 15 HPT's code. Defendant further alleges that it is in fact HPT that has hacked and reverse
 16 engineered the software products of others and has been doing so for years.

17 HPT has asserted claims for (i) violation of the Computer Fraud and Abuse Act
 18 ("CFAA") arising under 18 U.S.C. §1030; (ii) violation of the Defend Trade Secrets Act
 19 ("DTSA"), 18 U.S.C. §1836 et seq.; (iii) misappropriation of trade secrets arising under the
 20 Washington Uniform Trade Secrets Act, RCW 19.108; (iv) violation of the Illinois Trade Secrets
 21 Act, 765 ILCS 1065/1 et. seq.; (v) unfair competition under the Washington Consumer
 22 Protection Act, RCW 19.86.020; (vi) unfair competition under the Illinois Consumer Fraud and
 23 Deceptive Business Practices Act, 815 ILCS 505/1 et. seq.; (vii) breach of contract; and (viii)
 24 tortious interference with prospective economic relations.

1 Defendants filed an answer on October 19, 2017 denying the material allegations of
 2 Plaintiff's Complaint in their entirety.

3 **II. PROCEDURAL POSTURE**

4 This case was filed on September 20, 2017. Plaintiff filed a motion for Temporary
 5 Restraining Order, which was denied on October 18, 2017. The date for hearing on Plaintiff's
 6 motion for preliminary injunction has not been scheduled. Defendants answered on October 19,
 7 2017. Defendants served Requests for Production on Plaintiff on December 2, 2017. Plaintiff
 8 intends to issue written discovery on or before December 12, 2017.

9 **III. PROPOSED DISCOVERY PLAN – Fed. R. Civ. P. 26(f)(3)**

10 (A) The Parties shall exchange initial disclosures on or before December 19, 2017.

11 (B) The Parties anticipate taking discovery in accordance with the applicable civil
 12 rules on subjects pertinent to their claims and/or defenses. As noted above, Defendants served
 13 requests for production of documents on December 2, 2017. Plaintiff intends to issue written
 14 discovery on or before December 12, 2017.

15 (C) The Parties anticipate seeking discovery of electronically stored information,
 16 including emails and other electronic communications, as well as documents generally kept in
 17 the usual course of business. The Parties do not anticipate the discovery of electronically stored
 18 information to present unique or complex issues.

19 (D) The Parties do not anticipate that privilege issues will play a larger role in this
 20 case than they typically do, but expect to ask the Court to enter a stipulated order under Federal
 21 Rule of Evidence 502.

22 (E) The Parties do not agree to limiting discovery beyond the limits imposed by the
 23 applicable federal and/or local rules.

24 (F) The Parties do not believe at this time that the Court should enter any other orders
 25 under Fed. R. Civ. P. 26(c), 16(b) or 16(c). The Parties do anticipate the need for a stipulated

1 protective order before exchanging documents pursuant to discovery requests to protect
2 confidential information.

3 **IV. LOCAL CIVIL RULE 26(f)**

4 (A) As to possibilities for promptly settling or otherwise resolving the case, Plaintiff's
5 position is that, at this juncture, sufficient information is not available based on the current state
6 of the pleadings and declarations, as well as previously-known information, to attempt to settle
7 or otherwise resolve the entire case or substantial portions of the case. Specifically, Plaintiff
8 asserts that it is necessary that Plaintiff conduct an analysis of the software as well as investigate
9 a handful of issues prior to discussing any resolution.

10 Defendants' position is that early settlement of this matter should be pursued given the
11 ease with which Defendants can demonstrate that the Syked ECU Tuning software was
12 independently developed and does not contain any proprietary information from Plaintiff's
13 software.

14 (B) As to whether the parties plan to engage in some form of alternative dispute
15 resolution, Plaintiff's position is that it is prepared to engage in alternative dispute resolution
16 such as mediation, once it has had an opportunity to conduct an analysis of the software as well
17 as investigate a handful of issues prior to discussing any resolution.

18 Defendants have proposed that an early settlement conference occur at which both parties
19 meet to evaluate their respective software products simultaneously to prove that Defendants'
20 software does not incorporate any of HPT's allegedly proprietary source code. Defendants
21 believe that once they have demonstrated their software was independently developed, this
22 matter should be promptly dismissed. .

23 (C) There are no related cases.

1 (D) The Parties do not presently anticipate any need for extra discovery management
2 other than possible entry of a stipulated protective order to protect confidential information and a
3 Rule 502 clawback order.

4 (E) The Parties anticipate taking discovery in accordance with the applicable rules on
5 subjects germane to their claims or defenses.

6 (F) The Parties do not anticipate any need to formally phase motions practice.

7 (G) The Parties do not believe this case presents any unique preservation of evidence
8 issues.

9 (H) The Parties do not anticipate that privilege issues will play a larger role in this
10 case than they typically do. The Parties anticipate the possible need for the entry of a Rule 502(d)
11 or (e) order to address any inadvertent production of privileged information and other privilege
12 issues.

13 (I)-(J) The Parties do not anticipate that discovery of ESI will be a significant issue in
14 this case. The Parties agree to use their best efforts to resolve any disputes regarding the ESI
15 discovery before seeking court intervention.

16 **V. DISCOVERY DEADLINES**

17 The Parties discussed the subjects upon which fact discovery may be needed and the need
18 for expert discovery. The Parties have submitted a proposed discovery plan attached as
19 Exhibit A.

20 **VI. EXPERTS DESIGNATIONS AND REPORTS**

21 The Parties have submitted a proposed case schedule attached as Exhibit A.

22 **VII. MOTIONS DEADLINES**

23 The Parties have submitted a proposed case schedule attached as Exhibit A.

1 **VIII. ADDITIONAL PARTIES/AMENDMENTS TO PLEADINGS**

2 The Parties do not anticipate the joinder of any additional parties or amendments to
3 pleadings at this time. However, they have agreed that the deadline for joinder of any additional
4 parties or amendments to pleadings shall be March 1, 2018.

5 **IX. CONSENT TO MAGISTRATE JUDGE**

6 The Parties do not consent to a trial by a Magistrate Judge.

7 **X. BIFURCATION**

8 Not applicable.

9 **XI. PRETRIAL STATEMENTS**

10 The Parties agree at this time that there is no need to dispense with the pretrial statements
11 or pretrial order called for by the local rules.

12 **XII. OTHER SUGGESTIONS FOR SIMPLIFYING CASE**

13 The Parties have consented to accept electronic service pursuant to FRCP 5(b)(2)(E).
14 The Parties at this time have no other suggestions for shortening or simplifying the case. The
15 Parties have considered and rejected the option of requesting an Individualized Trial Program
16 under LCR 39.2.

17 **XIII. TRIAL**

18 A. Number of Trial Days: 3-5.

19 B. Trial By Jury or Non-Jury: Trial by jury has been demanded.

20 **XIV. SCHEDULING CONFERENCE**

21 The parties do not believe that the administration of the case may benefit from the Court
22 holding a scheduling/status conference.

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1 Dated: December 21, 2017

2 HEURLIN, POTTER, JAHN, LEATHAM,
3 HOLTMANN & STOKER, P.S.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on December 21, 2017, I caused the foregoing to be electronically
3 filed with the Clerk of the Court using the CM/ECF system which will send notification of such
4 filing to the following:

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EXHIBIT A

Event Deadline	Proposed Date
Initial Disclosures	COMPLETED
Confidential Settlement Meeting*	2/28/18
Joinder of Parties/Amended Pleadings	3/1/18
Close of Fact Discovery	6/1/18
Plaintiffs' Experts' Reports	7/2/18
Defendants' Experts' Rebuttal Reports	8/1/18
Close of Expert Discovery	By 9/1/18
Mediation	By 9/15/18
Dispositive Motions	10/18/18
Oppositions	11/5/18
Replies	11/9/18
Trial Date	The parties will be ready for trial at the Court's convenience any time after a ruling on any dispositive motions.